Taxation (International and Other Provisions) Act 2010

2010 CHAPTER 8

PART 2

DOUBLE TAXATION RELIEF

CHAPTER 1

DOUBLE TAXATION ARRANGEMENTS AND UNILATERAL RELIEF ARRANGEMENTS

Double taxation arrangements

2 Giving effect to arrangements made in relation to other territories

(1) If Her Majesty by Order in Council declares—

(a) that arrangements specified in the Order have been made in relation to any territory outside the United Kingdom with a view to affording relief from double taxation in relation to taxes within subsection (3), and

(b) that it is expedient that those arrangements should have effect,

those arrangements have effect.

[F1(1A) For the purposes of this section, arrangements made with a view to affording relief from double taxation include any arrangements which modify the effect of arrangements so made.]

(2) If arrangements have effect under subsection (1), they have effect in accordance with section 6.

(3) The taxes are—

(a) income tax,

(b) corporation tax,

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(c) capital gains tax,

(d) petroleum revenue tax, and

(e) any taxes imposed by the law of the territory that are of a similar character to taxes within paragraphs (a) to (d).

(4) In this Part "double taxation arrangements" means arrangements that have effect under subsection (1).

Textual Amendments

F1 S. 2(1A) inserted (retrospectively and with application in accordance with s. 32(5) of the amending Act) by Finance Act 2018 (c. 3), **s. 32(1)(4)**

3 Arrangements may include retrospective or supplementary provision

(1) Section 2(1) gives effect to arrangements even if the arrangements include—

(a) provision for relief from tax for periods before the passing of this Act, or

(b) provision for relief from tax for periods before the making of the arrangements.

(2) Section 2(1) gives effect to arrangements even if the arrangements include—

(a) provision as to income that is not subject to double taxation,

(b) provision as to chargeable gains that are not subject to double taxation, [F2]...

(c) provision as to foreign-field consideration that is not subject to double taxation **[**[F3]or

(d) provision conferring (with or without other functions) functions relating to the determination of matters arising under the arrangements on a public authority in the United Kingdom or in a territory outside the United Kingdom.**]**

(3) In subsection (2)(c) "foreign-field consideration" means consideration brought into charge to tax under section 12 of the Oil Taxation Act 1983 (charge to petroleum revenue tax on consideration in respect of United Kingdom use of a foreign field asset).

Textual Amendments

F2 Word in s. 3(2)(b) omitted (retrospectively and with application in accordance with s. 32(5) of the amending Act) by virtue of Finance Act 2018 (c. 3), **s. 32(2)(a)(4)**

F3 S. 3(2)(d) and word inserted (retrospectively and with application in accordance with s. 32(5) of the amending Act) by Finance Act 2018 (c. 3), **s. 32(2)(b)(4)**

4 Meaning of "double taxation" in sections 2 and 3

(1) For the purposes of sections 2 and 3, any amount within subsection (2) is to be treated as having been payable.

(2) An amount is within this subsection if it is an amount of tax that would have been payable under the law of a territory outside the United Kingdom but for a relief—

(a) given under the law of the territory with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the United Kingdom, and

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(b) about which provision is made in double taxation arrangements.

(3) References in sections 2 and 3 to double taxation are to be read in accordance with subsection (1).

5 Orders under section 2: contents and procedure

(1) If an Order under section 2 ("the later Order") revokes an earlier Order under that section, the later Order may contain transitional provisions that appear to Her Majesty to be necessary or expedient.

(2) An Order under section 2 is not to be submitted to Her Majesty in Council unless a draft of the Order has been laid before and approved by a resolution of the House of Commons.

6 The effect given by section 2 to double taxation arrangements

(1) Subject to this Part and Part 18 of ICTA, double taxation arrangements have effect in accordance with subsections (2) to (4) despite anything in any enactment.

(2) Double taxation arrangements have effect in relation to income tax and corporation tax so far as the arrangements provide—

(a) for relief from income tax or corporation tax,

(b) for taxing income of non-UK resident persons that arises from sources in the United Kingdom,

(c) for taxing chargeable gains accruing to non-UK resident persons on the disposal of assets in the United Kingdom,

(d) for determining the income or chargeable gains to be attributed to non-UK resident persons,

(e) for determining the income or chargeable gains to be attributed to agencies, branches or establishments in the United Kingdom of non-UK resident persons,

(f) for determining the income or chargeable gains to be attributed to UK resident persons who have special relationships with non-UK resident persons, or

(g) for conferring on non-UK resident persons the right to a tax credit under section 397(1) of ITTOIA 2005 in respect of qualifying distributions made to them by UK resident companies.

(3) Double taxation arrangements have effect in relation to capital gains tax so far as the arrangements provide—

(a) for relief from capital gains tax,

(b) for taxing capital gains accruing to non-UK resident persons on the disposal of assets in the United Kingdom,

(c) for determining the capital gains to be attributed to non-UK resident persons,

(d) for determining the capital gains to be attributed to agencies, branches or establishments in the United Kingdom of non-UK resident persons, or

(e) for determining the capital gains to be attributed to UK resident persons who have special relationships with non-UK resident persons.

(4) Double taxation arrangements have effect in relation to petroleum revenue tax so far as the arrangements provide for relief from petroleum revenue tax charged

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under section 12 of the Oil Taxation Act 1983 (charge to petroleum revenue tax on consideration in respect of United Kingdom use of a foreign field asset).

(5) In the case of relief under this Chapter that is not also relief under Chapter 2, the relief is not available in respect of special withholding tax (a corresponding rule applies in relation to relief under Chapter 2 as a result of the definition of foreign tax given by section 21).

(6) Relief under subsection (2)(a), (3)(a) or (4) requires a claim.

(7) In subsection (3) "UK resident person" and "non-UK resident person" have the meaning given by section 989 of ITA 2007.

(8) In subsection (5) "special withholding tax" has the same meaning as in Part 3 (see section 136).

7 General regulations

(1) The Commissioners for Her Majesty's Revenue and Customs may make regulations generally for carrying out the provisions of the treaty sections or any double taxation arrangements.

(2) Regulations under subsection (1) may in particular provide for securing that relief from taxation imposed by the law of the territory to which any double taxation arrangements relate does not enure for the benefit of persons not entitled to that relief.

(3) Subsection (4) applies to tax if—
- (a) the tax is deductible from a payment but, in order to comply with double taxation arrangements, has not been deducted, and
- (b) it is discovered that the arrangements did not apply to that payment.

(4) Regulations under subsection (1) may in particular provide for authorising recovery of tax to which this subsection applies—
- (a) by assessment on the person entitled to the payment from which the tax is not deducted, or
- (b) by deduction from subsequent payments.

(5) In subsection (1) "the treaty sections" means—

sections 2 to 6,
section 134(1), and
section 134(3) to (6) so far as relating to section 134(1).

(6) This section does not apply in relation to—
- (a) petroleum revenue tax, or
- (b) taxes imposed by the law of a territory outside the United Kingdom that—
  - (i) are of a similar character to petroleum revenue tax, and
  - (ii) are not of a similar character to income tax, corporation tax or capital gains tax.

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Unilateral relief arrangements

8 Interpretation: "unilateral relief arrangements" means rules 1 to 9, etc

(1) In this Part "unilateral relief arrangements", in relation to a territory outside the United Kingdom, means the rules set out in sections 9 to 17.

(2) In sections 11 to 17, and in Chapter 2 (except section 29) in its application to relief under unilateral relief arrangements, references to tax payable or paid under the law of a territory outside the United Kingdom include only—

(a) taxes which are charged on income and which correspond to income tax,

(b) taxes which are charged on income or chargeable gains and which correspond to corporation tax, and

(c) taxes which are charged on capital gains and which correspond to capital gains tax.

(3) For the purposes of subsection (2), tax may correspond to income tax, corporation tax or capital gains tax even though it—

(a) is payable under the law of a province, state or other part of a country, or

(b) is levied by or on behalf of a municipality or other local body.

9 Rule 1: the unilateral entitlement to credit for non-UK tax

(1) Credit for tax—

(a) paid under the law of the territory,

(b) calculated by reference to income arising, or any chargeable gain accruing, in the territory, and

(c) corresponding to UK tax,

is to be allowed against any income tax or corporation tax calculated by reference to that income or gain.

(2) Credit for tax—

(a) paid under the law of the territory,

(b) calculated by reference to any capital gain accruing in the territory, and

(c) corresponding to UK tax,

is to be allowed against any capital gains tax calculated by reference to that gain.

(3) For the purposes of subsection (1), profits from, or remuneration for, personal or professional services performed in the territory are to be treated as income arising in the territory.

(4) For the purposes of subsection (1)(c), tax corresponds to UK tax if—

(a) it is charged on income and corresponds to income tax, or

(b) it is charged on income or chargeable gains and corresponds to corporation tax.

(5) For the purposes of subsection (2)(c), tax corresponds to UK tax if it is charged on capital gains and corresponds to capital gains tax.

(6) For the purposes of subsections (4) and (5), tax may correspond to income tax, corporation tax or capital gains tax even though it—

(a) is payable under the law of a province, state or other part of a country, or

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(b) is levied by or on behalf of a municipality or other local body.

(7) If the territory is the Isle of Man or any of the Channel Islands, subsections (1)(b) and (2)(b) have effect with the omission of "in the territory".

(8) Subsections (1) and (2) are subject to sections 11 and 12.

10 Rule 2: accrued income profits

(1) Subsection (2) applies if—

(a) a person is treated under section 628(5) of ITA 2007 as making accrued income profits in an interest period,

(b) the person would, were the person to become entitled in the relevant tax year to any interest on the securities concerned, be liable in respect of the interest to tax chargeable under ITTOIA 2005 on relevant foreign income, and

(c) the person is liable under the law of the territory to tax in respect of interest payable on the securities at the end of the interest period or the person would be so liable if the person were entitled to that interest.

(2) Credit is to be allowed against income tax calculated by reference to the accrued income profits.

(3) The amount of the credit allowed under subsection (2) is given by—

$$AIP \times FTR$$

where—
AIP is the amount of the accrued income profits, and
FTR is the rate of tax to which the person is or would be liable as mentioned in subsection (1)(c).

(4) Subsection (2) is subject to section 11.

(5) In subsection (1)(b) "the relevant tax year" means the tax year in which, under section 617(2) of ITA 2007, the accrued income profits are treated as made.

(6) Expressions used in this section and in Chapter 2 of Part 12 of ITA 2007 (accrued income profits) have the same meaning as in that Chapter.

11 Rule 3: interaction between double taxation arrangements and rules 1 and 2

(1) Credit for tax paid under the law of the territory is not allowed under section 9 or 10 in the case of any income or gains if any credit for that tax is allowable in respect of that income or those gains under double taxation arrangements made in relation to the territory.

(2) If credit in respect of an amount of tax may be allowed under double taxation arrangements made in relation to the territory, credit is not allowed under section 9 or 10 in respect of that tax.

(3) If double taxation arrangements made in relation to the territory contain express provision to the effect that relief by way of credit is not to be given under the arrangements in cases or circumstances specified or described in the arrangements, credit is not allowed under section 9 or 10 in those cases or circumstances.

12 Rule 4: cases in which, and calculation of, credit allowed for tax on dividends

(1) Credit under section 9 for overseas tax on a dividend paid by a company ("P") resident in the territory is allowed only if section 13, 14, 15 or 16 so provides.

(2) If credit is allowed in principle as a result of at least one of sections 14, 15 and 16, any tax in respect of P's profits that is paid by P under the law of the territory is to be taken into account in considering whether any, and (if so) what, credit is in fact to be allowed under section 9 in respect of the dividend.

(3) If credit is allowed in principle as a result of at least one of sections 15 and 16, there is to be taken into account, as if it were tax payable under the law of the territory, any tax that would be so taken into account under section 63(5) if the recipient of the dividend—

(a) directly or indirectly controlled, or

(b) were a subsidiary of a company that directly or indirectly controlled,

at least 10% of the voting power in P.

(4) For the purposes of subsection (3), the recipient is a subsidiary of another company if the other company controls, directly or indirectly, at least 50% of the voting power in the recipient.

13 Rule 5: credit for tax charged directly on dividend

(1) This section applies for the purposes of section 12(1).

(2) Credit under section 9 for overseas tax on a dividend paid by a company ("P") resident in the territory is allowed if—

(a) the overseas tax is charged directly on the dividend (whether by charge to tax, deduction of tax at source or otherwise), and

(b) neither P nor the recipient of the dividend would have borne any of that tax if the dividend had not been paid.

14 Rule 6: credit for underlying tax on dividend paid to 10% associate of payer

(1) This section applies for the purposes of section 12(1).

(2) Credit under section 9 for overseas tax on a dividend paid by a company ("P") resident in the territory is allowed if conditions A and B are met.

(3) Condition A is that—

(a) the recipient of the dividend is a company resident in the United Kingdom, or

(b) the recipient is a company resident outside the United Kingdom but the dividend forms part of the profits of a permanent establishment of the recipient in the United Kingdom.

(4) Condition B is that the recipient—

(a) directly or indirectly controls, or

(b) is a subsidiary of a company which directly or indirectly controls,

at least 10% of the voting power in P.

(5) For the purposes of subsection (4), the recipient is a subsidiary of another company if the other company controls, directly or indirectly, at least 50% of the voting power in the recipient.

15 Rule 7: credit for underlying tax on dividend paid to sub-10% associate

(1) This section applies for the purposes of section 12(1).

(2) Credit under section 9 for overseas tax on a dividend paid by a company ("P") resident in the territory is allowed if each of conditions A to C is met.

(3) Condition A is that—

(a) the recipient of the dividend is a company resident in the United Kingdom, or

(b) the recipient is a company resident outside the United Kingdom but the dividend forms part of the profits of a permanent establishment of the recipient in the United Kingdom.

(4) Condition B is that the recipient—

(a) directly or indirectly controls, or

(b) is a subsidiary of a company which directly or indirectly controls,

less than 10% of the voting power in P.

(5) If condition B is met, in subsection (6) "the held percentage" means the voting power in P which is directly or indirectly controlled by—

(a) the recipient, or

(b) a company of which the recipient is a subsidiary.

(6) Condition C is that—

(a) the held percentage has been reduced below 10%,

(b) the recipient shows that the reduction below the 10% limit (and any further reduction)—

(i) could not have been prevented by any reasonable endeavours on the part of the recipient, a parent or an associate, and

(ii) was due to a cause or causes not reasonably foreseeable by the recipient, a parent or an associate when control of the relevant voting power was acquired, and

(c) the recipient shows that no reasonable endeavours on the part of the recipient, a parent or an associate could have restored, or (as the case may be) increased, the held percentage to at least 10%.

(7) For the purposes of subsection (6) a company is an "associate" if—

(a) the company is neither the recipient nor a parent,

(b) before the reduction, the voting power in P that is in question was controlled otherwise than directly by the recipient, and

(c) the company is relevant for determining whether, before the reduction, the recipient—

(i) indirectly controlled, or

(ii) was a subsidiary of a company which directly or indirectly controlled,

at least 10% of the voting power in P.

(8) In subsections (6) and (7) "parent" means a company of which the recipient is a subsidiary.

(9) In subsection (6) "the relevant voting power" means—

(a) the voting power in P as a result of which relief was due under section 14 before the reduction, or

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(b) if control of the whole of that voting power was not acquired at the same time, that part of the voting power of which control was last acquired.

(10) For the purposes of this section, the recipient is a subsidiary of another company if the other company controls, directly or indirectly, at least 50% of the voting power in the recipient.

16 Rule 8: credit for underlying tax on dividend paid by exchanged associate

(1) This section applies for the purposes of section 12(1).

(2) Credit under section 9 for overseas tax on a dividend paid by a company ("P") resident in the territory is allowed if each of conditions A to C is met.

(3) Condition A is that—

(a) the recipient of the dividend is a company resident in the United Kingdom, or

(b) the recipient is a company resident outside the United Kingdom but the dividend forms part of the profits of a permanent establishment of the recipient in the United Kingdom.

(4) Condition B is that the recipient—

(a) directly or indirectly controls, or

(b) is a subsidiary of a company which directly or indirectly controls,

less than 10% of the voting power in P.

(5) If condition B is met, in subsection (6) "the held percentage" means the voting power in P which is directly or indirectly controlled by—

(a) the recipient, or

(b) a company of which the recipient is a subsidiary.

(6) Condition C is that—

(a) the held percentage has been acquired in exchange for voting power in another company ("X"),

(b) before the exchange, the recipient—

(i) directly or indirectly controlled, or

(ii) was a subsidiary of a company which directly or indirectly controlled,

at least 10% of the voting power in X,

(c) the recipient shows that the exchange (and any reduction after the exchange) —

(i) could not have been prevented by any reasonable endeavours on the part of the recipient, a parent or an associate, and

(ii) was due to a cause or causes not reasonably foreseeable by the recipient, a parent or an associate when control of the relevant voting power was acquired, and

(d) the recipient shows that no reasonable endeavours on the part of the recipient, a parent or an associate could have restored, or (as the case may be) increased, the held percentage to at least 10%.

(7) For the purposes of subsection (6) a company is an "associate" if—

(a) the company is neither the recipient nor a parent,

(b) before the exchange, the voting power in X that is in question was controlled otherwise than directly by the recipient, and

(c) the company is relevant for determining whether, before the exchange, the recipient—
(i) indirectly controlled, or
(ii) was a subsidiary of a company which directly or indirectly controlled,
at least 10% of the voting power in X.

(8) In subsections (6) and (7) "parent" means a company of which the recipient is a subsidiary.

(9) In subsection (6) "the relevant voting power" means—
(a) the voting power in X as a result of which relief was due under section 14 before the exchange, or
(b) if control of the whole of that voting power was not acquired at the same time, that part of the voting power of which control was last acquired.

(10) For the purposes of this section, the recipient is a subsidiary of another company if the other company controls, directly or indirectly, at least 50% of the voting power in the recipient.

17 Rule 9: credit in relation to dividends for spared tax

(1) Subsection (2) applies if—
(a) under the law of the territory, an amount of tax ("the spared tax") would, but for a relief, have been payable by a company resident in the territory ("company A") in respect of any of its profits,
(b) company A pays a dividend out of those profits to another company resident in the territory ("company B"),
(c) company B, out of profits which consist of or include the whole or part of that dividend, pays a dividend to a company resident in the United Kingdom ("company C"), and
(d) the circumstances are such that, had company B been resident in the United Kingdom, it would have been entitled, as a result of the operation of section 20(2) in relation to double taxation arrangements made in relation to the territory, to treat the spared tax for the purposes of Chapter 2 as having been payable.

(2) The spared tax is to be taken into account—
(a) for the purposes of sections 9 to 16, and
(b) subject to section 31(4), for the purposes of Chapter 2 in its application to relief under these rules in relation to the dividend paid to company C,
as if it had been payable and paid.

(3) References in these rules and that Chapter—
(a) to tax payable or chargeable, or
(b) to tax not chargeable directly or by deduction,
are to be read in accordance with subsection (2).

(4) Except as provided by subsection (2), in relation to any dividend paid—
(a) by a company resident in the territory,
(b) to a company resident in the United Kingdom,

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credit as a result of these rules is not to be given under section 63(5) in respect of tax which would have been payable under the law of the territory, or under the law of any other territory outside the United Kingdom, but for a relief.

(5) Subsection (4) has effect despite any double taxation arrangements—

(a) made in relation to the territory, or

(b) made in relation to any other territory outside the United Kingdom,

which make provision about a relief given, under the law of the territory in relation to which the arrangements are made, with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the United Kingdom.

(6) In this section "these rules" means sections 9 to 16 and this section.

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